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IN THE

Supreme Court of the United States

October Term 1941

No. 889

315-84

LOIS G. LARSON, also known as L. G. LARSON, doing business as L. G. LARSON DRILLING COMPANY,

Appellant (Petitioner),

vs.

JACK LANE, Trustee in Bankruptcy of the ESTATE OF LOIS G. LARSON, etc., Bankrupt; SERVICE OILFIELD SUPPLY CO., INC.; ROTARY DRILLING AND RENTAL CORPORATION, and H. C. SMITH OIL TOOL COMPANY,

Appellees (Respondents).

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, Ninth Circuit and Brief in Support Thereof.

LOIS G. LARSON,
5560 Cherry Avenue, Long Beach,
In Propria Persona.

Parker & Baird Company, Law Printers, Los Angeles.

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JACK LANE, Trustee in Bankruptcy of the ESTATE OF LOIS G. LARSON, etc., Bankrupt; SERVICE OILFIELD SUPPLY CO., INC.; ROTARY DRILLING AND RENTAL CORPORATION, and H. C. SMITH OIL TOOL COMPANY,

Appellees (Respondents).

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Lois G. Larson, respectfully shows to this Honorable Court that this is a petition for a writ of certiorari to the Circuit Court of Appeals, Ninth Circuit, to review a decision made and entered by that Court on December 1, 1941, affirming the order denying a petition for an order to vacate adjudication in bankruptcy and dismiss involuntary proceedings in the District Court of the United States for the Southern District of California, Central Division.

Summary and Short Statement of the Matter Involved.

This proceeding was instituted by a petition for an order to vacate adjudication in bankruptcy and dismiss involuntary proceedings filed by the respondents, Service Oilfield Supply Co., Inc.; Rotary Drilling and Rental Corporation; and H. C. Smith Oil Tool Company, upon the grounds, that those corporations were not creditors of this petitioner, and that the consent to an adjudication was obtained by duress and threats.

That, in the petition for an order to vacate adjudication in bankruptcy and dismiss involuntary proceedings, this petitioner informed the District Court of the United States, Southern District of California, Central Division, in paragraph V:

> "That said involuntary petition was in fact not signed by three creditors of this petitioner, nor was the same sufficient to confer jurisdiction upon this Court to adjudicate this petitioner a bankrupt, nor were the persons, firms or corporations signing the same qualified creditors of this petitioner at the time of filing thereof, * * *"

That in paragraph IV, this petitioner informed the Court that:

> "On or about the 8th day of April, 1940, this petitioner was induced to sign and did sign a consent to her adjudication as a bankrupt, but that said consent and this petitioner's signature thereto were obtained by duress, as hereinafter alleged."

This petitioner was not served with a copy of the involuntary petition against her and she did not know who were the involuntary petitioners against her until just

before her petition for an order to vacate adjudication in bankruptcy and dismiss involuntary proceedings was filed.

The adjudication was made under the Bankruptcy Statute on April 8, 1940, and that part of said Statute, Section 59-b, which is applicable to the suit reads as follows, regarding those parties who may file an involuntary petition to give the court jurisdiction over the property of the alleged bankrupt:

> "b. Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; * * * may file a petition to have him adjudged a bankrupt."
>
> "The definition of a 'creditor' shall include anyone who owns a demand or claim provable in bankruptcy, * * *"

This petitioner, a married woman, was the owner of an oil lease in the Montebello Oil Field in the State of California and that she entered into a contract whereby one John Parker agreed to drill an oil well upon her property. The consideration was to be made from the proceeds of the production of oil from that venture. Later this petitioner entered into agreements with the two respondents herein, the Rotary Drilling and Rental Corporation, and the H. C. Smith Oil Tool Company, whereby they were to furnish drilling equipment and drilling bits to this one John Parker for use in the drilling of the oil well. The consideration in the agreements with the Rotary Drilling and Rental Corporation was to be three times the regular rental for the drilling equipment to be paid only from the proceeds of the production or payable out of the gross production of oils saved, sold

and produced from her property. [Pr. Tr. pp. 26-27, Exhibit No. 1.] The consideration in the agreement with the H. C. Smith Oil Tool Company was; all of the equipment to be paid for on the basis of two times the published list price in force and effect as of August 24, 1939; all payments to be made out of 10% of the first gross oil produced. [Pr. Tr. p. 109, Exhibit No. 6.]

This petitioner had no contracts, oral or written, with the Service Oilfield Supply Company, Inc. [Pr. Tr. p. 52.]

The Circuit Court of Appeals for the Ninth Circuit sustained the District Court's decision claiming jurisdiction even though the involuntary petition in bankruptcy was brought by joint adventurers with the bankrupt and even though one of the signers of said involuntary petition had no dealings or contracts, oral or written, with the bankrupt. This decision allows joint adventurers to nominate the trustee in bankruptcy, to take over their co-joint adventurer's estate, and to control the suits involved. This procedure allows the joint adventurers to deprive the petitioner of her property and personal rights.

None of the corporations were creditors with provable claims against this petitioner. That there has been attempts to make the joint adventure contracts into possible provable claims by alterations.

That this petitioner brought to the attention of the Court facts of extrinsic fraud upon this petitioner that duress and threats were made whereby this petitioner signed whatever papers Raphael Dechter, attorney for the respondents, requested.

That this petitioner brought to the attention of the Court the facts constituting extrinsic fraud upon the court, in that the allegations of jurisdictional facts in the

involuntary petitioner for bankruptcy, that the respondent corporations were creditors with provable claims, and the allegations of acts of bankruptcy were untrue, and that they were made only for the purpose of inducing the court to assume jurisdiction where none in fact existed.

Questions Involved.

1. JURISDICTION OF THE COURT:

a. *Parties Invoking Jurisdiction.*

Can persons or firms who are joint adventurers or without provable claims invoke the jurisdiction of Bankruptcy Court under Section 59-b?

b. *Subject of Bankruptcy.*

Can an involuntary petition which alleges no debt against a married woman, nor any allegation of an agreement to be bound in regard to her separate property, confer jurisdiction upon the Bankruptcy Court?

2. EXTRINSIC FRAUD:

a. *Extrinsic Fraud Upon Court.*

Does a false and fictitious allegation of a jurisdictional fact in an involuntary petition for bankruptcy constitute extrinsic fraud upon the court and nullify the adjudication based upon the false allegation?

b. *Extrinsic Fraud Upon Alleged Bankrupt.*

(1) Can jurisdiction of the Bankruptcy Court be properly assumed without the service of process and subpoena upon the alleged bankrupt?

(2) Does the pressure, duress and threats according to the facts in this case and all the surrounding circumstances, constitute extrinsic fraud upon this petitioner?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I.

The Circuit Court of Appeals for the Ninth Circuit Has Decided an Important Question of Federal Bankruptcy Law Which Has Not Been but Should Be Settled by This Court.

Section 59-b of the Bankruptcy Act has been construed to require as indispensable that there be a provable debt and that those parties only who own such a provable debt may bring an involuntary petition against another person, and that the relation of debtor and creditor must exist, before the Bankruptcy Court's jurisdiction can attach. Cases involving partnerships and joint adventurer show the principles involved, and requirements that a petitioner must have a provable claim.

In re Pickering Lumber Co. (1932), 1 Fed. Supp. 82 (D. Ct. Mo.);

In re Hawkeye Oil Co. (1927), 19 F. (2d) 151 (D. C. Del.);

Meeks v. Centre County Bank, 268 U. S. 426, 69 L. Ed. 1028;

In re Walker (1910), 176 Fed. 455 (N. D. Ala.);

In re Philadelphia Rapid Transit Co., 8 Fed. Supp. 51 (Pa.);

In re Floyd & Co. (1907), 156 Fed. 206 (D. Ct. N. C.);

Robinson v. Hanaway (1879), 20 Fed. Cas. 1012, Fed. Cas. No. 11953 (D. Ct. W. D. Penn.);

In re McCloskey, et al. (1926), 18 Fed. (2d) 311 (D. Ct. E. D. Penn.),

In re Julian (1938), 22 Fed. Supp. 97 (D. Ct. Penn.);

In re Morales (1901), 105 Fed. 761 (Fla.);

In re Ellis (1906), 142 Fed. 103 (C. C. A. 6th Cir.);

Doty v. Mason (1917), 244 Fed. 587 (D. Ct. So. Dist. Fla.);

In re Maples (1901), 105 Fed. 919 (D. Ct. Mont.);

In re Yates (1902), 144 Fed. 365 (D. Ct. Calif.);

In re Fuller (1926), 15 Fed. (2d) 294 (C. C. A. 2nd Cir.).

The involuntary petition for bankruptcy against this petitioner shows on its face that she was a married woman, and said involuntary petition lacks any allegation that this petitioner as a married woman ever agreed to any liability to the respondents. The evidence shows that she was a joint adventurer with two of said corporations.

By allowing this assumption of jurisdiction to stand, the Court will be also allowing these joint adventurers to share in the distribution of the assets of this petitioner's estate, who at law or in equity would not be liable to them.

The questions are ones which should be decided by this Honorable Court to prevent further suits and to insure uniformity of application of the Bankruptcy Statute here involved.

II.

The Circuit Court of Appeals for the Ninth Circuit Has Decided an Important Question of General Law in a Way Probably Untenable or in Conflict With the Weight of Authority, or Has So Far Departed From the Accepted and Usual Course of Judicial Proceeding or So Far Sanctioned Such a Departure by a Lower Court as to Call for an Exercise of This Court's Power of Supervision.

The Circuit Court of Appeals for the Ninth Circuit has decided that the Bankruptcy Court's jurisdiction did not depend on the truth or falsity of the involuntary petition in bankruptcy, and their truth or falsity need not be determined. And this opinion was given in the opinion after stating that an adjudication could be set aside (1) for lack of jurisdiction, (2) for extrinsic fraud.

This decision is in conflict with the weight of authority as announced in decisions of this Honorable Court, as well as decisions of the United States Circuit Court of Appeals, and United States District Courts, as well as decisions in regards to judgments in the State Courts.

The question of what constitutes "Extrinsic Fraud" has been decided by the courts many times in the past.

The weight of authority in the Federal Courts is that a Bankruptcy Court has full equity jurisdiction and may refuse an adjudication where requested for the purposes of fraud or may set aside an adjudication obtained by fraud.

Also a petitioning person or firm affirming a thing to be true as of his own knowledge though suspecting it to be false, is guilty of fraud. (*Navison Shoe Co. v. Lane Shoe Co.*, 36 Fed. (2d) 454.)

The weight of authority is that a petitioner who knowing that an allegation was false, or did so recklessly not caring whether the allegation which it affirmed as of its own knowledge to be true or false, and being false, its conduct was a fraudulent attempt to confer jurisdiction upon the court, where none existed, the same constituting extrinsic fraud.

Bank of Arapahoe v. Bradley & Co., 72 Fed. 867;

Navison Shoe Co. v. Lane etc., 36 Fed. (2d) 454;

Robinson v. Anderson, 121 U. S. 522, 30 L. Ed. 1021;

Carey v. Carey, 183 Atl. 371 (Penn.);

State of Oregon v. Vincent, 152 Ore. 205, 52 Pac. (2d) 203;

Paul v. Paul, 41 S. D. 383, 170 N. W. 658;

In re Associated Oil Co. (1921), 271 Fed. 788 (D. Ct. La.);

Kerr v. Southwest Fluorite Co., 294 Pac. 324;

In re Ettinger (1935), 76 Fed. (2d) 741 (C. C. A. 2nd Cir.);

In re Scammon, Fed. Cas. No. 12427, 21 Fed. Cas. 617;

In re St. Lawrence Condensed Milk Co. (1925), 9 Fed. (2d) 896 (C. C. A. 2nd Cir.)

What constitutes extrinsic fraud has been decided in many cases in the past under the doctrine presumably that the petitioner or plaintiff cannot come into court with unclean hands and especially cannot fraudulently and falsely allege a jurisdictional fact for the purpose of inducing the court to take the jurisdiction.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this court for its review and determination on a day certain to be therein named, a full and complete transcript of the record, exhibits, and all procedings in the case numbered and entitled on this docket No. 9773, Lois G. Larson, a. k. a. L. G. Larson, etc. vs. Jack Lane Trustee, etc., Service Oilfield Supply Co., Inc., Rotary Drilling & Rental Corporation, H. C. Smith Oil Tool Company.

And that said judgment of said United States Circuit Court of Appeals for the Ninth Circuit, may be reversed by this Honorable Court and that the judgment and the order of adjudication in bankrutcy of the District Court of the United States for the Southern District of California, Central Division, may be set aside and the involuntary petition for bankruptcy dismissed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and proper.

Dated: This 19th day of December, 1941.

LOIS G. LARSON,
In Propria Persona.